

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 198

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Roberto "Bobby" J. Gonzales

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PROVIDING FOR LOCAL OPTION COMPENSATING TAXES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

A. "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with

underscored material = new
[bracketed material] = delete

1 the fiscal agent of New Mexico;

2 B. "department" means the taxation and revenue
3 department, the secretary or any employee of the department
4 exercising authority lawfully delegated to that employee by the
5 secretary;

6 C. "electronic payment" means a payment made by
7 automated clearinghouse deposit, any funds wire transfer system
8 or a credit card, debit card or electronic cash transaction
9 through the internet;

10 D. "employee of the department" means any employee
11 of the department, including the secretary, or any person
12 acting as agent or authorized to represent or perform services
13 for the department in any capacity with respect to any law made
14 subject to administration and enforcement under the provisions
15 of the Tax Administration Act;

16 E. "financial institution" means any state or
17 federally chartered, federally insured depository institution;

18 F. "Internal Revenue Code" means the Internal
19 Revenue Code of 1986, as amended;

20 G. "levy" means the lawful power, hereby invested
21 in the secretary, to take into possession or to require the
22 present or future surrender to the secretary or the secretary's
23 delegate of any property or rights to property belonging to a
24 delinquent taxpayer;

25 H. "local option compensating tax" means a tax

.159265.1

underscored material = new
[bracketed material] = delete

1 authorized to be imposed by a county or municipality upon the
2 taxpayer's use of property, as the term "use" is defined in the
3 Gross Receipts and Compensating Tax Act, and required to be
4 collected by the department at the same time and in the same
5 manner as the compensating tax; "local option compensating tax"
6 includes the compensating taxes imposed pursuant to the
7 Municipal Local Option Gross Receipts Taxes Act, Supplemental
8 Municipal Gross Receipts Tax Act, County Local Option Gross
9 Receipts Taxes Act, Local Hospital Gross Receipts Tax Act,
10 County Correctional Facility Gross Receipts Tax Act and such
11 other acts as may be enacted authorizing counties or
12 municipalities to impose taxes on use of property, which taxes
13 are to be collected by the department in the same time and in
14 the same manner as it collects the compensating tax;

15 [H.] I. "local option gross receipts tax" means a
16 tax authorized to be imposed by a county or municipality upon
17 the taxpayer's gross receipts, as that term is defined in the
18 Gross Receipts and Compensating Tax Act, and required to be
19 collected by the department at the same time and in the same
20 manner as the gross receipts tax; "local option gross receipts
21 tax" includes the taxes imposed pursuant to the Municipal Local
22 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
23 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,
24 Local Hospital Gross Receipts Tax Act, County Correctional
25 Facility Gross Receipts Tax Act and such other acts as may be

.159265.1

underscored material = new
[bracketed material] = delete

1 enacted authorizing counties or municipalities to impose taxes
2 on gross receipts, which taxes are to be collected by the
3 department in the same time and in the same manner as it
4 collects the gross receipts tax;

5 ~~[I.]~~ J. "managed audit" means a review and analysis
6 conducted by a taxpayer under an agreement with the department
7 to determine the taxpayer's compliance with a tax administered
8 pursuant to the Tax Administration Act and the presentation of
9 the results to the department for assessment of tax found to be
10 due;

11 ~~[J.]~~ K. "net receipts" means the total amount of
12 money paid by taxpayers to the department in a month pursuant
13 to a tax or tax act less any refunds disbursed in that month
14 with respect to that tax or tax act;

15 ~~[K.]~~ L. "overpayment" means an amount paid,
16 pursuant to any law subject to administration and enforcement
17 under the provisions of the Tax Administration Act, by a person
18 to the department or withheld from the person in excess of tax
19 due from the person to the state at the time of the payment or
20 at the time the amount withheld is credited against tax due;

21 ~~[L.]~~ M. "paid" includes the term "paid over";

22 ~~[M.]~~ N. "pay" includes the term "pay over";

23 ~~[N.]~~ O. "payment" includes the term "payment over";

24 ~~[O.]~~ P. "person" means any individual, estate,
25 trust, receiver, cooperative association, club, corporation,

.159265.1

underscoring material = new
[bracketed material] = delete

1 company, firm, partnership, limited liability company, limited
2 liability partnership, joint venture, syndicate, other
3 association or gas, water or electric utility owned or operated
4 by a county or municipality; "person" also means, to the extent
5 permitted by law, a federal, state or other governmental unit
6 or subdivision, or an agency, department or instrumentality
7 thereof; and "person", as used in Sections 7-1-72 through
8 7-1-74 NMSA 1978, also includes an officer or employee of a
9 corporation, a member or employee of a partnership or any
10 individual who, as such, is under a duty to perform any act in
11 respect of which a violation occurs;

12 [P-] Q. "property" means property or rights to
13 property;

14 [Q-] R. "property or rights to property" means any
15 tangible property, real or personal, or any intangible property
16 of a taxpayer;

17 [R-] S. "secretary" means the secretary of taxation
18 and revenue and, except for purposes of Subsection B of Section
19 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978,
20 also includes the deputy secretary or a division director or
21 deputy division director delegated by the secretary;

22 [S-] T. "secretary or the secretary's delegate"
23 means the secretary or any employee of the department
24 exercising authority lawfully delegated to that employee by the
25 secretary;

.159265.1

underscored material = new
[bracketed material] = delete

1 ~~[F.]~~ U. "security" means money, property or rights
2 to property or a surety bond;

3 ~~[H.]~~ V. "state" means any state of the United
4 States, the District of Columbia, the commonwealth of Puerto
5 Rico and any territory or possession of the United States;

6 ~~[V.]~~ W. "tax" means the total amount of each tax
7 imposed and required to be paid, withheld and paid or collected
8 and paid under provision of any law made subject to
9 administration and enforcement according to the provisions of
10 the Tax Administration Act and, unless the context otherwise
11 requires, includes the amount of any interest or civil penalty
12 relating thereto; "tax" also means any amount of any abatement
13 of tax made or any credit, rebate or refund paid or credited by
14 the department under any law subject to administration and
15 enforcement under the provisions of the Tax Administration Act
16 to any person contrary to law and includes, unless the context
17 requires otherwise, the amount of any interest or civil penalty
18 relating thereto;

19 ~~[W.]~~ X. "taxpayer" means a person liable for
20 payment of any tax, a person responsible for withholding and
21 payment or for collection and payment of any tax or a person to
22 whom an assessment has been made, if the assessment remains
23 unabated or the amount thereof has not been paid; and

24 ~~[X.]~~ Y. "tax return preparer" means a person who
25 prepares for others for compensation or who employs one or more

.159265.1

underscored material = new
[bracketed material] = delete

1 persons to prepare for others for compensation any return of
2 income tax, a substantial portion of any return of income tax,
3 any claim for refund with respect to income tax or a
4 substantial portion of any claim for refund with respect to
5 income tax; provided that a person shall not be a "tax return
6 preparer" merely because such person:

7 (1) furnishes typing, reproducing or other
8 mechanical assistance;

9 (2) is an employee who prepares an income tax
10 return or claim for refund with respect to an income tax return
11 of the employer, or of an officer or employee of the employer,
12 by whom the person is regularly and continuously employed; or

13 (3) prepares as a trustee or other fiduciary
14 an income tax return or claim for refund with respect to income
15 tax for any person."

16 Section 2. Section 7-1-6.12 NMSA 1978 (being Laws 1983,
17 Chapter 211, Section 17, as amended) is amended to read:

18 "7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION
19 GROSS RECEIPTS TAXES--REVENUES FROM LOCAL OPTION COMPENSATING
20 TAXES.--

21 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
22 shall be made to each municipality for which the department is
23 collecting a local option gross receipts tax imposed by that
24 municipality in an amount, subject to any increase or decrease
25 made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net

.159265.1

underscored material = new
[bracketed material] = delete

1 receipts attributable to the local option gross receipts tax
2 imposed by that municipality, less any deduction for
3 administrative cost determined and made by the department
4 pursuant to the provisions of the act authorizing imposition by
5 that municipality of the local option gross receipts tax and
6 any additional administrative fee withheld pursuant to
7 Subsection C of Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA
8 1978.

9 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
10 shall be made to each municipality for which the department is
11 collecting a local option compensating tax imposed by that
12 municipality in an amount, subject to any increase or decrease
13 pursuant to Section 7-1-6.15 NMSA 1978, equal to the net
14 receipts attributable to the local option compensating tax
15 imposed by that municipality."

16 Section 3. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
17 Chapter 211, Section 18, as amended) is amended to read:

18 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
19 GROSS RECEIPTS TAXES--REVENUES FROM COUNTY LOCAL OPTION
20 COMPENSATING TAXES.--

21 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
22 shall be made to each county for which the department is
23 collecting a local option gross receipts tax imposed by that
24 county in an amount, subject to any increase or decrease made
25 pursuant to Section 7-1-6.15 NMSA 1978, equal to the net

.159265.1

underscored material = new
[bracketed material] = delete

1 receipts attributable to the local option gross receipts tax
2 imposed by that county, less any deduction for administrative
3 cost determined and made by the department pursuant to the
4 provisions of the act authorizing imposition by that county of
5 the local option gross receipts tax and any additional
6 administrative fee withheld pursuant to Subsection C of Section
7 7-1-6.41 NMSA 1978.

8 B. A transfer pursuant to Section 7-1-6.1 NMSA 1978
9 shall be made to each county for which the department is
10 collecting a local option compensating tax imposed by that
11 county in an amount, subject to any increase or decrease made
12 pursuant to Section 7-1-6.15 NMSA 1978, equal to the net
13 receipts attributable to the local option compensating tax
14 imposed by that county."

15 Section 4. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
16 Chapter 211, Section 20, as amended) is amended to read:

17 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
18 MUNICIPALITIES OR COUNTIES.--

19 A. The provisions of this section apply to:

20 (1) any distribution to a municipality of
21 gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or
22 of interstate telecommunications gross receipts tax pursuant to
23 Section 7-1-6.36 NMSA 1978;

24 (2) any transfer to a municipality with
25 respect to any local option gross receipts tax or local option

.159265.1

underscored material = new
[bracketed material] = delete

1 compensating tax imposed by that municipality;

2 (3) any transfer to a county with respect to
3 any local option gross receipts tax or local option
4 compensating tax imposed by that county;

5 (4) any distribution to a county pursuant to
6 Section 7-1-6.16 NMSA 1978;

7 (5) any distribution to a municipality or a
8 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

9 (6) any transfer to a county with respect to
10 any tax imposed in accordance with the Local Liquor Excise Tax
11 Act;

12 (7) any distribution to a municipality or a
13 county of cigarette taxes pursuant to Sections 7-1-6.11,
14 7-12-15 and 7-12-16 NMSA 1978;

15 (8) any distribution to a county from the
16 county government road fund pursuant to Section 7-1-6.26 NMSA
17 1978;

18 (9) any distribution to a municipality of
19 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

20 (10) any distribution to a municipality,
21 county, school district or special district of oil and gas ad
22 valorem production tax reduced as a result of a refund
23 requested in December 1998 with respect to production of carbon
24 dioxide.

25 B. If the secretary determines that any prior

.159265.1

underscoring material = new
[bracketed material] = delete

1 distribution or transfer to a political subdivision was
2 erroneous, the secretary shall increase or decrease the next
3 distribution or transfer amount for that political subdivision
4 after the determination, except as provided in Subsection C, D
5 or E of this section, by the amount necessary to correct the
6 error. Subject to the provisions of Subsection E of this
7 section, the secretary shall notify the political subdivision
8 of the amount of each increase or decrease.

9 C. No decrease shall be made to current or future
10 distributions or transfers to a political subdivision for any
11 excess distribution or transfer made to that political
12 subdivision more than one year prior to the calendar year in
13 which the determination of the secretary was made.

14 D. The secretary, in lieu of recovery from the next
15 distribution or transfer amount, may recover an excess
16 distribution or transfer of one hundred dollars (\$100) or more
17 to the political subdivision in installments from current and
18 future distributions or transfers to that political subdivision
19 pursuant to an agreement with the officials of the political
20 subdivision whenever the amount of the distribution or transfer
21 decrease for the political subdivision exceeds ten percent of
22 the average distribution or transfer amount for that political
23 subdivision for the twelve months preceding the month in which
24 the secretary's determination is made; provided that for the
25 purposes of this subsection, the "average distribution or

.159265.1

underscoring material = new
[bracketed material] = delete

1 transfer amount" shall be the arithmetic mean of the
2 distribution or transfer amounts within the twelve months
3 immediately preceding the month in which the determination is
4 made.

5 E. Except for the provisions of this section, if
6 the amount by which a distribution or transfer would be
7 adjusted pursuant to Subsection B of this section is one
8 hundred dollars (\$100) or less, no adjustment or notice need be
9 made.

10 F. The secretary is authorized to decrease a
11 distribution to a municipality or county upon being directed
12 to do so by the secretary of finance and administration
13 pursuant to the State Aid Intercept Act or to redirect a
14 distribution to the New Mexico finance authority pursuant to
15 an ordinance or a resolution passed by the county or
16 municipality and a written agreement of the municipality or
17 county and the New Mexico finance authority. Upon direction
18 to decrease a distribution or notice to redirect a
19 distribution to a municipality or county, the secretary shall
20 decrease or redirect the next designated distribution, and
21 succeeding distributions as necessary, by the amount of the
22 state distributions intercept authorized by the secretary of
23 finance and administration pursuant to the State Aid
24 Intercept Act or by the amount of the state distribution
25 intercept authorized pursuant to an ordinance or a resolution

.159265.1

underscored material = new
[bracketed material] = delete

1 passed by the county or municipality and a written agreement
2 with the New Mexico finance authority. The secretary shall
3 transfer the state distributions intercept amount to the
4 municipal or county treasurer or other person designated by
5 the secretary of finance and administration or to the New
6 Mexico finance authority pursuant to written agreement to pay
7 the debt service to avoid default on qualified local revenue
8 bonds or meet other local revenue bond, loan or other debt
9 obligations of the municipality or county to the New Mexico
10 finance authority."

11 Section 5. A new section of the Tax Administration Act
12 is enacted to read:

13 "[NEW MATERIAL] LOCATION OF USE.--

14 A. For compensating tax and local option
15 compensating tax purposes, use of property occurs in the
16 jurisdiction in which:

17 (1) the buyer's place of business is located
18 if the buyer is engaging in business in New Mexico and uses
19 the property in furtherance of that business;

20 (2) the buyer's principal office is located
21 if the buyer is the state or a local government or an agency
22 or instrumentality of the state or a local government; or

23 (3) the buyer's residence is located if the
24 buyer is not engaging in business in New Mexico or does not
25 use the property in furtherance of business.

.159265.1

underscored material = new
[bracketed material] = delete

1 B. The department shall promulgate regulations to
2 determine where use will be attributed when the buyer has
3 more than one business location or residence in New Mexico."

4 Section 6. Section 7-9-7.1 NMSA 1978 (being Laws 1993,
5 Chapter 45, Section 1, as amended) is amended to read:

6 "7-9-7.1. DEPARTMENT BARRED FROM TAKING COLLECTION
7 ACTIONS WITH RESPECT TO CERTAIN COMPENSATING TAX
8 LIABILITIES.--

9 A. The department shall take no action to enforce
10 collection of compensating tax or any local option
11 compensating tax due on purchases made by an individual if:

12 (1) the property is used only for
13 nonbusiness purposes;

14 (2) the property is not a manufactured home;
15 and

16 (3) the individual is not an agent for
17 collection of compensating tax pursuant to Section 7-9-10
18 NMSA 1978.

19 B. The prohibition in Subsection A of this
20 section does not prevent the department from enforcing
21 collection of compensating tax or any local option
22 compensating tax on purchases from persons who are not
23 individuals, who are agents for collection pursuant to
24 Section 7-9-10 NMSA 1978 or who use the property in the
25 course of engaging in business in New Mexico or from

.159265.1

underscored material = new
[bracketed material] = delete

1 enforcing collection of compensating tax or any local option
2 compensating tax due on purchase of manufactured homes."

3 Section 7. Section 7-9-9 NMSA 1978 (being Laws 1966,
4 Chapter 47, Section 9, as amended) is amended to read:

5 "7-9-9. LIABILITY OF USER FOR PAYMENT OF COMPENSATING
6 TAX AND LOCAL OPTION COMPENSATING TAX.--Any person in New
7 Mexico using property on the value of which compensating tax
8 and local option compensating tax is payable but has not been
9 paid is liable to the state for payment of the compensating
10 tax and applicable local option compensating tax, but this
11 liability is discharged if the buyer has paid the
12 compensating tax and applicable local option compensating tax
13 to the seller for payment over to the department."

14 Section 8. A new section of the Gross Receipts and
15 Compensating Tax Act is enacted to read:

16 "[NEW MATERIAL] CREDIT--COMPENSATING TAX--MUNICIPAL
17 COMPENSATING TAX PAID.--A credit shall be allowed for each
18 reporting period against the compensating tax for an amount
19 of the municipal compensating tax equal to:

20 A. one-half percent of the value of property for
21 which the taxpayer is liable for that reporting period if the
22 rate of the municipal compensating tax in effect at the time
23 of the use was one-half percent; or

24 B. one-fourth percent of the value of property
25 for which the taxpayer is liable for that reporting period if

underscored material = new
[bracketed material] = delete

1 the rate of the municipal compensating tax in effect at the
2 time of the use was one-fourth percent."

3 Section 9. Section 7-19-12 NMSA 1978 (being Laws 1979,
4 Chapter 397, Section 3, as amended) is amended to read:

5 "7-19-12. AUTHORIZATION TO IMPOSE SUPPLEMENTAL
6 MUNICIPAL GROSS RECEIPTS TAX AND SUPPLEMENTAL MUNICIPAL
7 COMPENSATING TAX--AUTHORIZATION FOR ISSUANCE OF SUPPLEMENTAL
8 MUNICIPAL GROSS RECEIPTS BONDS--ELECTION REQUIRED.--

9 A. The majority of the members elected to the
10 governing body of a municipality may enact an ordinance
11 imposing an excise tax on any person engaging in business in
12 the municipality for the privilege of engaging in business in
13 the municipality. This tax is to be referred to as the
14 "supplemental municipal gross receipts tax". The rate of the
15 tax shall not exceed one percent of the gross receipts of the
16 person engaging in business and shall be imposed in one-
17 fourth percent increments if less than one percent.

18 B. An ordinance imposing a tax authorized by
19 Subsection A of this section shall also impose a tax for the
20 privilege of using property in the municipality if the use or
21 service is subject to the compensating tax. This tax shall
22 be referred to as the "supplemental municipal compensating
23 tax". The rate of the tax imposed pursuant to this
24 subsection shall be the same as the rate of tax imposed
25 pursuant to Subsection A of this section. If, on July 1,

.159265.1

underscored material = new
[bracketed material] = delete

1 2006, a municipality has in effect any amount of supplemental
2 municipal gross receipts tax, a supplemental municipal
3 compensating tax is hereby imposed at the same rate,
4 effective July 1, 2006.

5 ~~[B.]~~ C. The governing body of a municipality
6 enacting an ordinance imposing the ~~[tax]~~ taxes authorized in
7 ~~[Subsection A]~~ Subsections A and B of this section shall
8 submit the question of imposing ~~[such tax]~~ the taxes and the
9 question of the issuance of supplemental municipal gross
10 receipts bonds in an amount not to exceed nine million
11 dollars (\$9,000,000), for which the revenue from the
12 supplemental municipal gross receipts tax and supplemental
13 municipal compensating tax is dedicated, to the qualified
14 electors of the municipality at a regular or special
15 election.

16 ~~[C.]~~ D. The questions referred to in Subsection
17 ~~[B]~~ C of this section shall be submitted to a vote of the
18 qualified electors of the municipality as two separate ballot
19 questions, which shall be substantially in the following
20 form:

21 (1) "Shall the municipality be authorized to
22 issue supplemental municipal gross receipts bonds in an
23 amount of not exceeding _____ dollars for the
24 purpose of constructing and equipping and otherwise acquiring
25 a municipal water supply system?

.159265.1

underscored material = new
[bracketed material] = delete

1 For _____ Against _____"; and
2 (2) "Shall the municipality impose an excise
3 tax for the privilege of engaging in business in the
4 municipality, which shall be known as the "supplemental
5 municipal gross receipts tax", and an excise tax on the use
6 of property in the municipality, which shall be known as the
7 "supplemental municipal compensating tax", both of which
8 shall be imposed at a rate of _____ percent [~~of the~~
9 ~~gross receipts of the person engaging in business~~], the
10 proceeds of which are dedicated to the payment of
11 supplemental municipal gross receipts bonds?

12 For _____ Against _____".

13 [~~D.~~] E. Only those voters who are registered
14 electors who reside within the municipality shall be
15 permitted to vote on these two questions. The procedures for
16 conducting the election shall be substantially the same as
17 the applicable provisions in Sections 3-30-1, 3-30-6 and
18 3-30-7 NMSA 1978 relating to municipal debt.

19 [~~E.~~] F. If at an election called pursuant to this
20 section a majority of the voters voting on each of the two
21 questions vote in the affirmative on each [~~such~~] question,
22 [~~then~~] the ordinance imposing the supplemental municipal
23 gross receipts tax and supplemental municipal compensating
24 tax shall be approved. If at such election a majority of the
25 voters voting on such questions [~~fail~~] fails to approve any

.159265.1

underscored material = new
[bracketed material] = delete

1 of the questions, [~~then~~] the ordinance imposing the [~~tax~~]
2 taxes shall be disapproved and the questions required to be
3 submitted by Subsection [~~B~~] C of this section shall not be
4 submitted to the voters for a period of one year from the
5 date of the election.

6 [~~F-~~] G. Any ordinance enacted under the
7 provisions of this section shall include an effective date of
8 either July 1 or January 1, whichever date occurs first after
9 the expiration of at least [~~five~~] three months from the date
10 of the election. A certified copy of any ordinance imposing
11 a supplemental municipal gross receipts tax and supplemental
12 municipal compensating tax shall be mailed to the [~~division~~]
13 department within five days after the ordinance is adopted by
14 the approval by the electorate. Any ordinance repealing the
15 imposition of a tax under the provisions of the Supplemental
16 Municipal Gross Receipts Tax Act shall become effective on
17 either July 1 or January 1, after the expiration of at least
18 [~~five~~] three months from the date the ordinance is repealed
19 by the governing body.

20 [~~G-~~] H. Nothing in this section is intended to or
21 does alter the effectiveness or validity of any actions taken
22 in accordance with Subsection G of Section 80 of Chapter 20
23 of Laws 1986."

24 Section 10. Section 7-19-13 NMSA 1978 (being Laws 1979,
25 Chapter 397, Section 4) is amended to read:

.159265.1

underscored material = new
[bracketed material] = delete

1 "7-19-13. ORDINANCE [~~MUST~~] SHALL CONFORM TO CERTAIN
2 PROVISIONS OF THE GROSS RECEIPTS AND COMPENSATING TAX ACT AND
3 REQUIREMENTS OF THE [~~DIVISION~~] DEPARTMENT.--

4 A. Any ordinance imposing a supplemental
5 municipal gross receipts tax and supplemental municipal
6 compensating tax shall adopt by reference the same
7 definitions and the same provisions relating to exemptions
8 and deductions as are contained in the Gross Receipts and
9 Compensating Tax Act then in effect and as it may be amended
10 from time to time.

11 B. The governing body of any municipality
12 imposing or increasing the supplemental municipal gross
13 receipts tax [~~must~~] and supplemental municipal compensating
14 tax shall adopt the language of the model ordinance furnished
15 to the municipality by the [~~division~~] department for the
16 portion of the ordinance relating to the [~~tax~~] taxes."

17 Section 11. Section 7-19-15 NMSA 1978 (being Laws 1979,
18 Chapter 397, Section 6, as amended) is amended to read:

19 "7-19-15. COLLECTION BY DEPARTMENT--TRANSFER OF
20 PROCEEDS--DEDUCTIONS.--

21 A. The department shall collect the supplemental
22 municipal gross receipts tax in the same manner and at the
23 same time it collects the state gross receipts tax. The
24 department shall collect the supplemental municipal
25 compensating tax in the same manner and at the same time it

.159265.1

underscored material = new
[bracketed material] = delete

1 collects the compensating tax.

2 B. The department shall withhold an
3 administrative fee pursuant to Section [~~1 of this 1997 act~~]
4 7-1-6.41 NMSA 1978. The department shall transfer to each
5 municipality for which it is collecting a supplemental
6 municipal gross receipts tax the amount of the tax collected
7 less the administrative fee withheld and less any
8 disbursements for tax credits, refunds and the payment of
9 interest applicable to the supplemental municipal gross
10 receipts tax. The department shall transfer to each
11 municipality for which it is collecting a supplemental
12 municipal compensating tax the amount of the tax collected
13 less any disbursements for tax credits, refunds and payment
14 of interest applicable to the supplemental municipal
15 compensating tax. Transfer of the [~~tax~~] taxes to a
16 municipality shall be made within the month following the
17 month in which the [~~tax is~~] taxes are collected."

18 Section 12. Section 7-19-16 NMSA 1978 (being Laws 1979,
19 Chapter 397, Section 7) is amended to read:

20 "7-19-16. INTERPRETATION OF ACT--ADMINISTRATION AND
21 ENFORCEMENT OF [~~TAX~~] TAXES.--

22 A. The [~~division~~] department shall interpret the
23 provisions of the Supplemental Municipal Gross Receipts Tax
24 Act.

25 B. The [~~division~~] department shall administer and

.159265.1

underscored material = new
[bracketed material] = delete

1 enforce the collection of the supplemental municipal gross
2 receipts tax and the supplemental municipal compensating tax,
3 and the Tax Administration Act applies to the administration
4 and enforcement of the [~~tax~~] taxes."

5 Section 13. Section 7-19-18 NMSA 1978 (being Laws 1979,
6 Chapter 397, Section 9, as amended) is amended to read:

7 "7-19-18. SUPPLEMENTAL MUNICIPAL GROSS RECEIPTS TAX AND
8 SUPPLEMENTAL MUNICIPAL COMPENSATING TAX--USE OF PROCEEDS--
9 RESTRICTION.--

10 A. The proceeds from the supplemental municipal
11 gross receipts tax and supplemental municipal compensating
12 tax shall be deposited in a special improvement account of
13 the municipality and shall be used only for:

14 (1) the payment of the principal of,
15 interest on, any prior redemption premiums due in connection
16 with and other expenses related to the supplemental municipal
17 gross receipts bonds issued pursuant to the Supplemental
18 Municipal Gross Receipts Tax Act;

19 (2) the funding of any reserves and other
20 accounts in connection with such bonds;

21 (3) refunding bonds; and

22 (4) to the extent not needed for those
23 purposes, the improvement of the municipality's water system.

24 B. When any issue of supplemental municipal gross
25 receipts bonds is fully paid, the supplemental municipal

.159265.1

underscored material = new
[bracketed material] = delete

1 gross receipts tax and supplemental municipal compensating tax
2 shall cease to be imposed for that issue, but may continue to
3 be imposed for bonds enacted and approved pursuant to Section
4 7-19-12 NMSA 1978 and thereafter issued, or for refunding bonds
5 issued pursuant to Section [~~4 of this 1997 act~~] 7-19-17.1 NMSA
6 1978. Any money remaining in a special improvement account
7 after the obligations for supplemental municipal gross receipts
8 bonds and refunding bonds are fully paid may be transferred to
9 any other fund of the municipality."

10 Section 14. A new section of the Municipal Local Option
11 Gross Receipts Taxes Act is enacted to read:

12 "[NEW MATERIAL] MATCHING LOCAL OPTION COMPENSATING TAX.--

13 A. An ordinance imposing, increasing or repealing a
14 local option gross receipts tax authorized by the Municipal
15 Local Option Gross Receipts Taxes Act shall also impose,
16 increase or repeal a tax for the privilege of using property in
17 the municipality if the use of the property is subject to the
18 compensating tax. The rate of the municipal tax on use
19 imposed, increased or repealed shall be the same as the rate of
20 the local option gross receipts tax imposed, increased or
21 repealed.

22 B. If, on July 1, 2006, a municipality has in
23 effect a local option gross receipts tax authorized by the
24 Municipal Local Option Gross Receipts Taxes Act, a municipal
25 tax on use is hereby imposed at the same rate, effective July

.159265.1

underscored material = new
[bracketed material] = delete

1 1, 2006, except that the rate of the municipal tax on use
2 matching the municipal gross receipts tax shall be equal to the
3 rate of the municipal gross receipts tax for the municipality.

4 C. The municipal taxes on use authorized or imposed
5 by this section may be referred to generally as "municipal
6 local option compensating taxes". Each tax may be referred to
7 individually by reference to the local option gross receipts
8 tax with which it is associated."

9 Section 15. Section 7-19D-7 NMSA 1978 (being Laws 1993,
10 Chapter 346, Section 7, as amended) is amended to read:

11 "7-19D-7. COLLECTION BY DEPARTMENT--TRANSFER OF
12 PROCEEDS--DEDUCTIONS.--

13 A. The department shall collect each local option
14 gross receipts tax imposed pursuant to the provisions of the
15 Municipal Local Option Gross Receipts Taxes Act in the same
16 manner and at the same time it collects the state gross
17 receipts tax. The department shall collect the municipal local
18 option compensating taxes imposed pursuant to the provisions of
19 the Municipal Local Option Gross Receipts Taxes Act in the same
20 manner and at the same time it collects the compensating tax.

21 B. Except as provided in Subsection C of this
22 section, the department shall withhold an administrative fee
23 pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA 1978.
24 The department shall transfer to each municipality for which it
25 is collecting a local option gross receipts tax pursuant to the

.159265.1

underscored material = new
[bracketed material] = delete

1 provisions of the Municipal Local Option Gross Receipts Taxes
2 Act the amount of each tax collected for that municipality,
3 less the administrative fee withheld and less any disbursements
4 for tax credits, refunds and the payment of interest applicable
5 to the tax. The department shall transfer to each municipality
6 for which it collects a municipal local option compensating tax
7 pursuant to the provisions of the Municipal Local Option Gross
8 Receipts Taxes Act the amount of each tax collected for that
9 municipality less any disbursements for tax credits, refunds
10 and payment of interest applicable to the tax. The transfer to
11 the municipality shall be made within the month following the
12 month in which the tax is collected.

13 C. With respect to the municipal gross receipts tax
14 imposed by a municipality pursuant to Section 7-19D-9 NMSA
15 1978, the department shall withhold the administrative fee
16 pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA 1978
17 only on that portion of the municipal gross receipts tax
18 arising from a municipal gross receipts tax rate in excess of
19 one-half [~~of one~~] percent."

20 Section 16. A new section of the Local Hospital Gross
21 Receipts Tax Act is enacted to read:

22 "[NEW MATERIAL] MATCHING LOCAL HOSPITAL COMPENSATING
23 TAX.--Any ordinance imposing, increasing or repealing a local
24 hospital gross receipts tax authorized by the Local Hospital
25 Gross Receipts Tax Act shall also impose, increase or repeal a

.159265.1

underscored material = new
[bracketed material] = delete

1 tax for the privilege of using property in the county if the
2 use of the property is subject to the compensating tax. This
3 tax may be referred to as the "local hospital compensating
4 tax". The rate of the local hospital compensating tax imposed,
5 increased or repealed shall be the same as the rate of the
6 local hospital gross receipts tax imposed, increased or
7 repealed. If, on July 1, 2006, a county has in effect a local
8 hospital gross receipts tax, a local hospital compensating tax
9 is hereby imposed at the same rate, effective July 1, 2006."

10 Section 17. Section 7-20C-6 NMSA 1978 (being Laws 1991,
11 Chapter 176, Section 6, as amended) is amended to read:

12 "7-20C-6. COLLECTION BY DEPARTMENT--TRANSFER OF
13 PROCEEDS--DEDUCTIONS.--

14 A. The department shall collect the local hospital
15 gross receipts tax in the same manner and at the same time it
16 collects the state gross receipts tax. The department shall
17 collect the local hospital compensating tax in the same manner
18 and at the same time it collects the compensating tax.

19 B. The department shall withhold an administrative
20 fee pursuant to Section 7-1-6.41 NMSA 1978. The department
21 shall transfer to each county for which it is collecting [~~such~~]
22 the local hospital gross receipts tax the amount of the tax
23 collected less the administrative fee withheld and less any
24 disbursements for tax credits, refunds and the payment of
25 interest applicable to the tax. The department shall transfer

.159265.1

1 to each county for which it is collecting the local hospital
2 compensating tax the amount of the tax collected less any
3 disbursements for tax credits, refunds and the payment of
4 interest applicable to the tax. Transfer [~~of the tax~~] to a
5 county shall be made within the month following the month in
6 which the tax is collected."

7 Section 18. A new section of the County Local Option
8 Gross Receipts Taxes Act is enacted to read:

9 "[NEW MATERIAL] MATCHING LOCAL OPTION COMPENSATING TAX.--

10 A. Any ordinance imposing, increasing or repealing
11 a local option gross receipts tax authorized by the County
12 Local Option Gross Receipts Taxes Act to be imposed on a
13 countywide basis shall also impose, increase or repeal a tax
14 for the privilege of using property in the county if the use of
15 the property is subject to the compensating tax. The rate of
16 county tax on use imposed, increased or repealed shall be the
17 same as the rate of the local option gross receipts tax
18 imposed, increased or repealed.

19 B. Any ordinance imposing, increasing or repealing
20 a local option gross receipts tax authorized by the County
21 Local Option Gross Receipts Taxes Act to be imposed only in the
22 county area shall also impose, increase or repeal a tax for the
23 privilege of using property in the county area. The rate of
24 county area tax on use imposed, increased or repealed shall be
25 the same as the rate of the local option gross receipts tax

.159265.1

underscored material = new
[bracketed material] = delete

1 imposed, increased or repealed.

2 C. If, on July 1, 2006, a county has in effect a
3 local option gross receipts tax authorized to be imposed on a
4 countywide basis, a county tax on use of property in the county
5 is hereby imposed at the same rate, effective July 1, 2006.

6 If, on July 1, 2006, a county has in effect a local option
7 gross receipts tax authorized to be imposed only in the county
8 area, a county tax on use of property in the county area is
9 hereby imposed at the same rate, effective July 1, 2006.

10 D. The county taxes on use authorized or imposed by
11 this section may be referred to generally as "county local
12 option compensating taxes". Each tax may be referred to
13 individually by reference to the local option gross receipts
14 tax with which it is associated."

15 Section 19. Section 7-20E-7 NMSA 1978 (being Laws 1993,
16 Chapter 354, Section 7, as amended) is amended to read:

17 "7-20E-7. COLLECTION BY DEPARTMENT--TRANSFER OF
18 PROCEEDS--DEDUCTIONS.--

19 A. The department shall collect each county local
20 option gross receipts tax imposed pursuant to the provisions of
21 the County Local Option Gross Receipts Taxes Act in the same
22 manner and at the same time it collects the state gross
23 receipts tax. The department shall collect each county local
24 option compensating tax imposed pursuant to the provisions of
25 the County Local Option Gross Receipts Taxes Act in the same

.159265.1

underscored material = new
[bracketed material] = delete

1 manner and at the same time it collects the compensating tax.

2 B. The department shall withhold an administrative
3 fee pursuant to Section [~~1 of this 1997 act~~] 7-1-6.41 NMSA
4 1978. The department shall transfer to each county for which
5 it is collecting a county local option gross receipts tax
6 pursuant to the provisions of the County Local Option Gross
7 Receipts Taxes Act the amount of each county local option gross
8 receipts tax collected for that county less the administrative
9 fee withheld and less any disbursements for tax credits,
10 refunds and the payment of interest applicable to the tax. The
11 department shall transfer to each county for which it is
12 collecting a county local option compensating tax pursuant to
13 the provisions of the County Local Option Gross Receipts Taxes
14 Act the amount of each local option compensating tax collected
15 for that county less any disbursements for tax credits, refunds
16 and the payment of interest applicable to the tax. The
17 transfer [~~to the county~~] shall be made within the month
18 following the month in which the tax is collected."

19 Section 20. Section 7-20F-3 NMSA 1978 (being Laws 1993,
20 Chapter 303, Section 3, as amended) is amended to read:

21 "7-20F-3. COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS TAX
22 AND COUNTY CORRECTIONAL FACILITY COMPENSATING TAX--AUTHORITY TO
23 IMPOSE--RATE--ORDINANCE REQUIREMENTS--REFERENDUM.--

24 A. The majority of the members elected to the
25 county board may enact an ordinance imposing on a countywide

.159265.1

underscored material = new
[bracketed material] = delete

1 basis an excise tax not to exceed a rate of one-eighth percent
2 of the gross receipts of any person engaging in business in the
3 county, including all municipalities within the county.

4 B. The tax imposed pursuant to Subsection A of this
5 section may be referred to as the "county correctional facility
6 gross receipts tax".

7 C. An ordinance imposing a county correctional
8 facility gross receipts tax shall also impose a tax on the use
9 of property in the county if the use of the property is subject
10 to the compensating tax. This tax may be referred to as the
11 "county correctional facility compensating tax". The rate of
12 the county correctional facility compensating tax imposed shall
13 be the same as the rate of the county correctional facility
14 gross receipts tax imposed. If, on July 1, 2006, a county has
15 in effect a county correctional facility gross receipts tax, a
16 county correctional facility compensating tax is hereby imposed
17 at the same rate, effective July 1, 2006.

18 [~~C.~~] D. Any ordinance imposing a county
19 correctional facility gross receipts tax and county
20 correctional facility compensating tax pursuant to this section
21 shall:

22 (1) impose the [~~tax~~] taxes in any number of
23 increments of one-sixteenth percent not to exceed an aggregate
24 amount of one-eighth percent; provided that the rates of the
25 two taxes are the same;

.159265.1

underscoring material = new
[bracketed material] = delete

1 (2) specify that the imposition of the [~~tax~~]
2 taxes will begin on either July 1 or January 1, whichever
3 occurs first after the expiration of at least three months from
4 the date that the department is notified personally or by mail
5 by the county of adoption of the ordinance; and

6 (3) dedicate the revenue from the county
7 correctional facility gross receipts tax and county
8 correctional facility compensating tax:

9 (a) for the purpose of operating,
10 maintaining, constructing, purchasing, furnishing, equipping,
11 rehabilitating, expanding or improving a judicial-correctional
12 or a county correctional facility or the grounds of a judicial-
13 correctional or county correctional facility, including
14 acquiring and improving parking lots, landscaping or any
15 combination of the foregoing;

16 (b) for the purpose of transporting or
17 extraditing prisoners; or

18 (c) to payment of principal and interest
19 on revenue bonds or refunding bonds issued pursuant to the
20 provisions of the County Correctional Facility Gross Receipts
21 Tax Act.

22 [~~D.~~] E. An ordinance imposing a county correctional
23 facility gross receipts tax and county correctional facility
24 compensating tax pursuant to this section shall be subject to
25 optional referendum selection by the governing body, as

.159265.1

underscored material = new
[bracketed material] = delete

1 provided in Subsection A of Section 7-20E-3 NMSA 1978.

2 ~~[E.]~~ F. If the county has pledged the revenue from
3 imposition of the county correctional facilities gross receipts
4 tax and county correctional facility compensating tax to the
5 repayment of bonds or other indebtedness, revenue produced by
6 the imposition of a county correctional facility gross receipts
7 tax and county correctional facility compensating tax that is
8 in excess of the annual principal and interest due on bonds
9 secured by a pledge of the county correctional facility gross
10 receipts tax and county correctional facility compensating tax
11 may be accumulated in a debt service reserve account until an
12 amount equal to the maximum amount permitted pursuant to the
13 provisions of the United States treasury regulations is
14 accumulated in the debt service reserve account. After the
15 debt service reserve account requirements have been met, the
16 excess revenue shall be accumulated in an extraordinary
17 mandatory redemption fund and annually used to redeem the bonds
18 prior to their stated maturity date.

19 ~~[F.]~~ G. If the county has pledged the revenue from
20 imposition of the county correctional ~~[facilities]~~ facility
21 gross receipts tax and county correctional facility
22 compensating tax to the repayment of bonds or other
23 indebtedness, when all outstanding bonds have been paid,
24 whether from the debt service reserve, the redemption fund or
25 maturity, the ordinance shall be repealed if the county

.159265.1

underscored material = new
[bracketed material] = delete

1 correctional facility gross receipts tax revenue [~~is~~] and
2 county correctional facility compensating tax revenue are no
3 longer required for the purposes for which [~~it~~] they may be
4 used pursuant to the provisions of the County Correctional
5 Facility Gross Receipts Tax Act.

6 [~~G.~~] H. The repeal of an ordinance imposing a
7 county correctional facility gross receipts tax and county
8 correctional facility compensating tax shall state that the
9 repeal shall be effective on January 1 or July 1, whichever
10 occurs first following the date the department is notified
11 personally or by mail by the county of the repeal."

12 Section 21. Section 7-20F-5 NMSA 1978 (being Laws 1993,
13 Chapter 303, Section 5) is amended to read:

14 "7-20F-5. COLLECTION BY DEPARTMENT--TRANSFER OF
15 PROCEEDS--DEDUCTIONS.--

16 A. The department shall collect the county
17 correctional facility gross receipts tax in the same manner and
18 at the same time it collects the state gross receipts tax. The
19 department shall collect the county correctional facility
20 compensating tax in the same manner and at the same time it
21 collects the compensating tax.

22 B. The department shall remit to each county for
23 which it is collecting a county correctional facility gross
24 receipts tax and county correctional facility compensating tax
25 the amount of the [~~tax~~] taxes collected less any disbursement

.159265.1

underscored material = new
[bracketed material] = delete

1 for tax credits, refunds and the payment of interest applicable
2 to the [~~county correctional facility gross receipts tax~~] taxes.
3 Transfer [~~of the tax~~] to a county shall be made within the
4 month following the month in which the [~~tax is~~] taxes are
5 collected."

6 Section 22. Section 7-20F-7 NMSA 1978 (being Laws 1993,
7 Chapter 303, Section 7) is amended to read:

8 "7-20F-7. REVENUE BONDS--AUTHORITY TO ISSUE--ORDINANCE
9 AUTHORIZING ISSUE--PLEDGE OF REVENUE.--

10 A. In addition to any other law authorizing a
11 county to issue revenue bonds, a county may issue revenue bonds
12 pursuant to the County Correctional Facility Gross Receipts Tax
13 Act for the purposes specified in that act. Revenue bonds
14 issued pursuant to the County Correctional Facility Gross
15 Receipts Tax Act may be referred to as "county correctional
16 facility gross receipts tax revenue bonds".

17 B. A county board, by majority vote, may adopt an
18 ordinance providing for issuance of revenue bonds pursuant to
19 the provisions of the County Correctional Facility Gross
20 Receipts Tax Act, the principal and interest of which shall be
21 paid from the revenue derived by the county from the county
22 correctional facility gross receipts tax, the county
23 correctional facility compensating tax and any other revenue
24 that the county may dedicate to the payment of the revenue
25 bonds.

.159265.1

